No. 81-2283

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

WESTERN CONFERENCE OF TEAMSTERS
PENSION TRUST FUND,
Petitioner,

vs.

FRANK MUSIC,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITIONER'S REPLY BRIEF

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I. THE RULE OF DECISION BELOW CONFLICTS WITH THE DECISION OF THIS COURT IN UNITED MINE WORKERS v. ROBINSON.

Even if it were correct that the rule of the Ninth Circuit with respect to so-called "structural defects" is consistent with other circuit courts, it is expressly contrary to the interpretation of § 302 given by this Court in United Mine Workers, etc. v. Robinson (U.S.S.Ct.

March 8, 1982) ____ U.S. _____, 50 U.S.Law Week 4288.

Furthermore, there is simply no basis for the suggestion (Br. in Op., pp. 10-13) that the interpretation of that section by the Ninth Circuit and by the First Circuit are consistent.

II. THE RESULT BELOW WOULD NOT BE THE SAME IF ERISA PROVISIONS WERE APPLIED.

Respondent's Brief in Opposition is based largely on his contention that even if United Mine Workers now prohibits a "reasonableness" test for § 302, disability pension plans can still properly be tested for "reasonableness" under the general fiduciary duty provisions of § 404(a) of ERISA (Br. in Op., pp. 16-21). This contention is unsound for the following reasons:

Respondent finds support for his argument from the fact that the language of ERISA § 404(a) (29 U.S.C. § 1104(a)--

"solely in the interest of the participant"--closely resembles the "sole and exclusive benefit" language of § 302 (Br. in Op., p. 20). But this Court in United Mine Workers has interpreted the § 302 language not to include any reasonableness inquiry, and it follows that the ERISA § 404 language should be similarly construed. As this Court held all that this language means is that the Fund must benefit employees as opposed to outsiders. At most, respondent has raised the question whether Congress intended ERISA § 404 to have the same meaning as § 302, an issue hardly justifying the summary disposition respondent suggests.

In any event, respondent's contention that ERISA's fiduciary standards permit a reasonableness inquiry is wrong. In Fentron Industries v. Nat. Shopmen Pension Fund (9 Cir. 1982) 674 F.2d 1300, the Ninth Circuit found that no violation of ERISA § 404 was present simply because

the pension plan structurally violated ERISA's vesting rules. It held that "a trustee may be found to have violated his fiduciary duty only when his or her action was 'made in bad faith, or upon lack of a factual foundation, or when unsupported by substantial evidence'" (674 F.2d at 1307; citations omitted). The court went on to hold that the fiduciary standards under § 302 should be read similarly.

Far from endorsing a "reasonableness" test, Fentron holds that a structural violation will not automatically give rise to fiduciary liability under ERISA. The fiduciary liability provisions control bad faith actions by trustees, not the good faith enactment of eligibility rules that are subsequently determined to have been "structural defects." Fentron demonstrates that the court below would not reach the same result if it applied only the ERISA standards.

Indeed, it would be anomalous

for the ERISA standards to protect respondent's right to a disability benefit based on a "structural defect" theory when that benefit is not one protected by ERISA at all. ERISA's vesting rules apply only to "accrued benfits" (§ 203(a)),[1] which for a defined benefit plan such as this is "expressed in the form of an annual benefit commencing at normal retirement age" (§ 3(23)(A)).[2] A claim for an accrued

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1 Section 203(a) provides in pertinent part:

> "Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and * * *
>
> * * * * *
>
> * * * if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions."

2 Section 3(23)(A) provides in pertinent part:

> "The term 'accrued benefit' means--
>
> "(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and * * * expressed in the form of an annual benefit commencing at normal retirement age."

benefit does not even become actionable until the participant reaches normal retirement age--age 65, in the case of this Plan (Hernandez v. Southern Nevada Culinary & Bartenders (9 Cir. 1981) 662 F.2d 617; Hurn v. Retirement Fund Trust of Plumbing, Etc. (9 Cir. 1981) 648 F.2d 1252). This case involves a disability benefit respondent began receiving at age 47 (Br. in Op., p. 3). Because ERISA was "never intended to impose upon a plan a requirement that any benefits be payable before age 65" (Hernandez, supra, 662 F.2d at 619), respondent's claim that the ERISA fiduciary provisions protect his right to a higher disability benefit is unsound.

III. RESPONDENT'S ARGUMENT WITH RESPECT TO THE FIVE-MONTH WAITING PERIOD CONSTITUTES A MERE PLAY ON WORDS.

Respondent's purported answer to petitioner's second point is no answer at

all. The point is not whether disability benefits are vested under the Social Security Act. Petitioner's point is that the Pension Plan tracks the format adopted by Congress, and that there is nothing unreasonable in following the Congressional model. Respondent had no vested right to a disability benefit when the Plan was amended, and the court below merely held (as we have shown on pages 10-11 of our Petition) that the trustees chose the wrong words in amending the Plan.

Respectfully submitted,

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